IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Sales Tax Revision No. 98 of 2003
(Old No. 1609/1991)

The Commissioner Sales Tax
U.P. Lucknow .....Applicant/Revisionist

Versus

S/S Radhey Shaym & Co.
Ram Nagar (Nainital) .....Opposite Party/Respondent

Shri Pitamber Maulekhi, Additional Advocate General for the Revisionist.
Shri Sharad Sharma, learned counsel for the respondent.

Hon'ble Prafulla C. Pant, J.

Heard.

2. Question of law involved in this revision is:-

Whether in the facts and circumstances of the case, the Sales Tax Tribunal was justified in waiving the interest, holding that since the taxability to the tune of Rs. 51,225.20 was disputed as such, there is no intention to evade tax on the part of the assessee?

3. This revision is directed against the judgment and order dated 22.06.1991 passed by Trade Tax Tribunal, Haldwani, whereby Second Appeal No. 104 of 1991 of the assessee (present respondent) was allowed by said authority.

4. Brief facts of the case are that the assessee is a registered dealer in shoes and biscuits. Admittedly, in the assessment year 1985-86, sale of biscuits of Rs. 51,225.20 was made to another registered dealer- M/s India Boot House. To avoid the double taxation, such sale from one registered dealer to another registered dealer is exempted from the tax, provided the seller produces certificate in form 3-A, issued by the purchaser i.e. another registered dealer. It

is not disputed between the parties that the purchaser did not issue the certificate to the seller. As such, the assessee was liable to pay the tax on the sale of the biscuits of the value of Rs. 51,225.20. It is also accepted by the applicant that the respondent/assessee had to pay the tax as per the order dated 30.01.1990, issued by the Sales Tax Officer.

5. Under Section 8(1) of the U.P. Sales Tax Act, 1948, the admitted tax is required to be deposited within the time prescribed under the Act but in the present case, the said tax was admittedly paid after the assessment was made and not earlier. Section 8 of the aforesaid Act further provides that in case the admitted tax is not paid within time, a simple interest at the rate of 2% per mensum shall become due on the tax amount to be paid by the assessee. In this case, entire controversy relates to the liability as to the payment of interest by the assessee in the aforesaid circumstances. Learned Trade Tax Tribunal relying on the case law reported in Commissioner Sales Tax Vs. Rohtas Industries 1988 U.P.T.C. Pg. 1420, has allowed the appeal on the ground that interest was not payable in the present case due to the fact that the amount of tax was not admitted one.

6. This Court is of the opinion that the Tribunal has erred in law in applying the aforesaid case law, as the liability to pay the tax was not disputed in the present case, for the reason that the assessee admittedly failed to produce form 3-A, required for exemption. Had it been a case of imposition of penalty, in that case, in the above circumstances, it could have been said that the dealer had no intention to evade the tax. But as far as the liability to pay the interest is concerned, it has to be paid on the admitted sales tax liability, if the same is not paid within the prescribed period.

In the case of imposition of penalty, intention to evade the tax is a material factor but for the payment of interest on the tax liability, if the assessee fails to pay the tax within the prescribed time, it has to pay the interest as per the law. Section 8(1) of the Sales Tax Tribunal, 1948 is clear and unambiguous in this regard. The only condition is this that the tax must be admitted tax. Had there been a case that the assessee had not admitted the sales or that the item was challenged to be not taxable, the situation would have been different. But in the present case, the sale of commodity was taxable the sale was admitted, and for exemption, it was the dealer who was required to produce form 3-A from the purchaser and as such the impugned tax on the sale consideration was admitted tax liability of the dealer.

7. For the reasons as discussed above, the tribunal has erred in law in exempting the dealer from payment of interest on the sales tax paid by him for sale of biscuits of Rs. 51,225.20 for the assessment year 1985-86.

8. Accordingly, the revision is allowed. Judgment and order dated 26.02.1991 passed by Trade Tax Tribunal, Haldwani, is set aside and the order passed by First Appellate Authority is confirmed.

(Prafulla C. Pant, J.)

Dt: 28th February, 2006
Sweta